

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18010
[REDACTED],)	
)	DECISION
Petitioners.)	
)	
_____)	

On February 24, 2004, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued Notices of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable years 2000 and 2001 through 2002 in the total amount of \$2,260.

On April 16, 2004, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers requested a hearing via the telephone, which was held on December 16, 2004. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information from the Idaho Department of Labor that showed Mr. [Redacted] received income from an Idaho source. The Bureau researched the Tax Commission's records and found that the taxpayers filed their 1999 and 2000 Idaho individual income tax returns but failed to file returns for 2001 and 2002. The Bureau contacted the taxpayers and was told the 2001 and 2002 Idaho returns were filed. The taxpayers stated they tried to electronically file their returns, but the software kept asking for Mrs. [Redacted]' income, which the taxpayers stated Idaho had no right to tax. The Bureau asked the taxpayers to complete and return a domicile questionnaire and to provide copies of their returns for 2001 and 2002.

The taxpayers did not provide the requested information, so the Bureau obtained additional information [Redacted], determined the taxpayers were required to file Idaho returns,

and prepared 2001 and 2002 Idaho returns for the taxpayers. The Bureau also reviewed the taxpayers 2000 Idaho return and determined the taxpayers did not report all the income they were supposed to report to Idaho. The Bureau adjusted the taxpayers' 2000 Idaho return and sent them a Notice of Deficiency Determination. A Notice of Deficiency Determination was also sent to the taxpayers for the taxable years 2001 and 2002.

The taxpayers protested the Bureau's determinations and requested a hearing before the Commission. The taxpayers disagreed that any part of Mrs. [Redacted]' income was taxable by Idaho and that they did not file returns for 2001 and 2002. Since the taxpayers asked for a hearing, the Bureau referred the matter for administrative review. The Tax Commission sent the taxpayers a letter giving them two alternatives for having the Notices of Deficiency Determination redetermined. The taxpayers chose to have a hearing over the telephone.

The taxpayers filed their 2000 Idaho income tax return as married filing joint with Mr. [Redacted] a resident of Idaho and Mrs. [Redacted] a nonresident of Idaho. The taxpayers stated that Mrs. [Redacted] lived and worked in [Redacted]. She was a resident of [Redacted] and never lived in Idaho. The taxpayers stated Mr. [Redacted] and their children only came to Idaho for employment. Prior to coming to Idaho, Mr. [Redacted] worked for the same [Redacted] company in [Redacted] as Mrs. [Redacted]. When Mr. [Redacted] was laid off due to a slump in [Redacted], he came to Idaho for work. Mrs. [Redacted] however, remained in [Redacted] working at the mine. The taxpayers owned property and a doublewide manufactured home in [Redacted]. The taxpayers stated the move to Idaho was never intended to be permanent. Idaho was not the type of place Mr. [Redacted] wanted to live. Mr. [Redacted] was only going to work in Idaho until the [Redacted] went back into full production.

Mr. [Redacted] brought his children to Idaho because the atmosphere in Idaho was better for raising kids. Besides, Mrs. [Redacted] worked long hours and Mr. [Redacted] was able to be with the kids at night. The taxpayers stated that the income Mr. [Redacted] earned in Idaho was the only income he and the children had. The income earned by Mrs. [Redacted] stayed with Mrs. [Redacted] in [Redacted]. When Mr. [Redacted] and the kids moved to Idaho, they took only the necessities. Everything else was left in [Redacted]. Mr. [Redacted] and the kids lived in an apartment while in Idaho and the kids attended Idaho schools. As for visiting, Mrs. [Redacted] only came to Idaho on holidays, one to two days a couple of times a year. Presumably any other visits were by Mr. [Redacted] and the children going to [Redacted].

The 2000 return the taxpayers filed reported to Idaho only the income Mr. [Redacted] earned. The Bureau's review of the return revealed that both taxpayers lived in community property states. The Bureau determined from this fact that part of the income earned by Mrs. [Redacted] was attributable to Mr. [Redacted] and part of Mr. [Redacted]' income was attributable to Mrs. [Redacted]. Since Mr. [Redacted] was a resident of Idaho, he was required to report his income from all sources to Idaho. (Idaho Code section 63-3002.) Therefore, the Bureau adjusted the taxpayers' 2000 return to include half of Mrs. [Redacted]' income as Mr. [Redacted]' income. The taxpayers argued that Idaho could not tax income earned by Mrs. [Redacted] in [Redacted].

In general, community property laws state that community property is shared equally between spouses, while the separate property of each individual that is brought into the marriage remains separate property. The nine community property states, which includes Idaho and [Redacted], have various laws defining what constitutes community property. Generally, the taxpayer's state of domicile is the state whose community property laws are applied. In this case

the question of domicile was not fully addressed; nevertheless, the result is the same because the community property laws of [Redacted] and Idaho are similar regarding earned income.

Idaho's community property law states that income earned during the marriage is community property. (Idaho Code section 32-906.) [Redacted]'s community property law states that earnings acquired after marriage are community property unless there is an agreement in writing giving authority to appropriate the earnings of an individual to that individual's own use. (Nevada Revised Statutes 123.220.) The taxpayers stated they had no such agreement.

In addition to State law, the Internal Revenue Code (IRC) section 66(a) provides for non-recognition of community property laws when spouses live apart if,

If—

- (1) 2 individuals are married to each other at any time during a calendar year;
 - (2) such individuals—
 - (A) live apart at all times during the calendar year, and
 - (B) do not file a joint return under section 6013 with each other for a taxable year beginning or ending in the calendar year;
 - (3) one or both of such individuals have earned income for the calendar year which is community income; and
 - (4) no portion of such earned income is transferred (directly or indirectly) between such individuals before the close of the calendar year,
- then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

The taxpayers' federal returns for all three years were filed as married filing joint. Therefore, the provisions of IRC section 66(a) cannot relieve the taxpayers of their requirement to report their income as community income.

The community property laws of both Idaho and [Redacted] treat earnings as community property. Consequently, half the earnings of each of the taxpayers are attributable to the other. Since Mr. [Redacted] was a resident of Idaho for all of 2000 and 2001, his income from all

sources is reportable to Idaho. In addition, all income earned in Idaho (Idaho source income) is reportable to Idaho. Therefore, the income that Idaho can tax is all the income attributed to Mr. [Redacted] (one-half of his Idaho wages plus one-half of Mrs. [Redacted] wages) and all Idaho source income (all of Mr. [Redacted] wages). This was the method the Bureau used to determine the taxpayers' Idaho taxable income.

In 2002, Mr. [Redacted] left Idaho. He was in Idaho during the first quarter of the year; consequently, he was a part-year resident of Idaho. The information available shows Mr. [Redacted] received wages from an Idaho employer in the first quarter of 2002. That income exceeded the filing threshold of Idaho Code section 63-3030 for part-year resident individuals.

The taxpayers stated they filed returns for 2001 and 2002; however, the Tax Commission has no record of receiving either of those years' returns. The taxpayers further stated they received refunds from the state of Idaho. However, once again the Tax Commission has no record of issuing refunds to the taxpayers for those years and has no record of any refund checks being redeemed for those years.

The Bureau prepared 2001 and 2002 returns for the taxpayers from information it obtained [Redacted]. The Tax Commission reviewed those returns and found they fairly represented the taxpayers' Idaho taxable income for those years.

The Bureau added interest and penalty to the taxpayers' tax deficiencies. The Tax Commission reviewed those additions and found them proper and in accordance with Idaho Code sections 63-3045 and 63-3046 for the tax years 2001 and 2002. However, for tax year 2000 the Tax Commission found that the added delinquency penalty was inappropriate. The Tax Commission received the taxpayers' 2000 return on April 16, 2001. Since April 15, 2001 was a Sunday that year, the due date for tax year 2000 returns went to the next day that was not a

holiday, Saturday or Sunday: Monday, April 16, 2001. (Income Tax Administrative Rules IDAPA 35.01.01.810.02.) The taxpayers timely filed their 2000 return.

WHEREFORE, the Notices of Deficiency Determination dated February 24, 2004, are hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, are APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$ 650	\$ 0	\$172	\$ 822
2001	1,044	261	196	1,501
2002	5	10	1	<u>16</u>
			TOTAL DUE	<u>\$ 2,339</u>

DEMAND for immediate payment of the forgoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is included with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[REDACTED]
[REDACTED]

Receipt No.

[REDACTED]
[REDACTED]
[REDACTED]
